

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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STEVEN MCDERMOTT and  
STACEY MCDERMOTT  
Plaintiffs,

v.

DOCKET NO: 04-CV-12253

FEDEX GROUND PACKAGE SYSTEMS,  
INC., T.S. PRUITT, ALLEGIANCE  
HEALTHCARE, INC., D. PONCE, E.W.  
WYLIE CORPORATION, D.W. SMITH,  
ARSENBERGER TRUCKING, INC., J.T.  
FOSBRINK, RYDER TRUCK RENTAL,  
LORRAINE ODZANA as  
ADMINISTRATRIX OF THE ESTATE OF  
JAMES J. ODZANA, SHORELINE  
TRANSPORTATION, INC., JACLYN  
PALETTA as ADMINISTRATRIX OF  
THE ESTATE OF MARIO J. CASTRO  
Defendants.

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DEFENDANT, ARSENBERGER TRUCKING, INC.'S  
MOTION FOR ENTRY OF SEPARATE AND FINAL JUDGMENT

Now comes the defendant, Arsenberger Trucking, Inc. ("Arsenberger"), and moves that this Court direct an order entering separate and final judgment in favor of Arsenberger pursuant to Fed. R. Civ. P. 54(b). As reasons therefor, Arsenberger states as follows:

1. This case involves multiple defendants.
2. The plaintiffs filed a Complaint against FedEx Ground Package Systems and T.S. Pruitt on October 26, 2004. The plaintiffs then filed a Second Amended Complaint on December 22, 2006, adding ten defendants, including the defendant Arsenberger.
3. On July 27, 2007, Arsenberger filed a motion to dismiss on the grounds of a lack of

personal jurisdiction.

4. The court allowed Arsenberger's motion on September 13, 2007.

5. Pursuant to Rule 54(b), the Court may direct entry of separate and final judgment as to one or more claims or parties upon an express determination that there is no just reason for delay. As there are no pending claims against it, Arsenberger should not be forced to incur the hardship of remaining a party while litigation continues between the remaining parties.

6. There is no just reason for delay and the parties will not be prejudiced by the entry of separate and final judgment in favor of Arsenberger.

7. As set forth in the attached Memorandum, entry of separate and final judgment in favor of Arsenberger should be granted.

WHEREFORE, the defendant, Arsenberger Trucking, Inc., requests that this Court make an express determination that there is no just reason for delay and enter separate and final judgment in Arsenberger's favor, pursuant to Fed. R. Civ. P. 54(b), with respect to all claims against Arsenberger.

Respectfully submitted,

The Defendant,  
ARSENBERGER TRUCKING, INC.,  
By its Attorneys,

/s/Cheryl A. Enright

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CERTIFICATE OF SERVICE

I hereby certify that is document filed through the EFC system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on this 25<sup>th</sup> day of October, 2007.

/s/Cheryl A. Enright

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Cheryl A. Enright, BBO No. 552237